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SEC

SERVICE DATE - LATE RELEASE JANUARY 10, 2003

SURFACE TRANSPORTATION BOARD

DECISION¹

STB Docket No. 42069

DUKE ENERGY CORPORATION

v.

NORFOLK SOUTHERN RAILWAY COMPANY

STB Docket No. 42070

DUKE ENERGY CORPORATION

v.

CSX TRANSPORTATION, INC.

STB Docket No. 42072

CAROLINA POWER & LIGHT COMPANY

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Decided: January 10, 2003

Under 49 U.S.C. 10704(c), the Board has deadlines for issuing its decision in rail rate cases. Those deadlines are extremely tight, given the size of the voluminous records submitted in these cases and the number and complexity of the various issues that must be resolved in each case. Moreover, the Board is now faced with a record number of rail rate cases, which must be decided according to statutory time frames. Accordingly, in General Procedures For Presenting Evidence in Stand-Alone Cost Rate Cases, STB Ex Parte No. 347 (Sub No. 3) (STB served Mar. 12, 2001) (SAC Procedures), the Board promulgated procedural rules designed to standardize the filing of evidence in rail rate complaint cases adjudicated under the stand-alone cost (SAC) test, to enable the Board's staff to more expeditiously and efficiently complete review of the record in these cases.

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

One of the new procedural requirements is that, when parties rely on workpapers to support evidentiary presentations, “references to those materials must be included in the textual presentation with sufficient specificity to allow quick access to the referenced materials.” SAC Procedures at 3. This requirement was adopted to address difficulties that the Board’s staff faces in culling through hundreds or even thousands of pages of workpapers. The Board cautioned that if workpapers are not clearly referenced in the evidence and identified in the workpaper volumes, the Board may assume that the proponent of a specific position is not relying on such workpapers. Id. at 4.

In reviewing the evidence submitted in the three above-captioned rail rate complaint proceedings, Board staff has found that many of the references to workpapers are overly general, making it difficult to determine which specific pages in the workpaper volumes are being referenced. Moreover, certain of the workpaper volumes do not have the table of contents that is also required, see SAC Procedures at 4. The staff has found these problems to be particularly evident and troublesome with respect to the railroads’ submissions in these cases.

In an attempt to ensure that materials supporting the evidentiary presentations are not overlooked, the parties to these cases are directed to review their references to workpapers and replace broad or general citations with specific page references. The parties may supply more specific references by submitting a sequential list specifying the page and line on which the original reference appeared in the paper copy of the evidence and how that reference should be changed (for example, an item on the list might say “replace the reference to ‘workpaper III-F-5’ on line 12 of page III-F-29 of the reply evidence with ‘workpaper III-F-5-04109’”). In addition, parties should supply a table of contents for each workpaper volume that does not already have one.

To ensure that the staff has adequate time to review the records and consider the appropriate workpapers, any such list of replacement references and tables of contents should be submitted to the Board by January 17, 2003.

It is ordered:

1. A list of replacement references to workpapers and tables of contents in these cases should be submitted by January 17, 2003.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary